



1 MARTIN H. DODD (104363)
mdodd@fddcm.com
2 JAMIE L. DUPREE (158105)
jdupree@fddcm.com
3 JAIME G. TOUCHSTONE (233187)
jtouchstone@fddcm.com
4 FUTTERMAN DUPREE DODD
CROLEY MAIER LLP
5 601 Montgomery St., Suite 333
San Francisco, California 94111
Telephone: (415) 399-3840
Facsimile: (415) 399-3838

7 In Association with:
8 MILES KOWALSKI, Deputy County
9 Counsel (257269)
10 Miles.Kowalski@cc.sbccounty.gov
MICHELLE BLAKEMORE, County
Counsel (110474)
385 North Arrowhead Avenue, 4th Fl.
San Bernardino, CA 92415-0140
Telephone: (909) 387-5455
Facsimile: (909) 387-3070

*Attorneys for Defendant
San Bernardino County*

16 RAHSUN TURNER, on behalf of
themselves and all others similarly
situated.

17

18

19 COUNTY OF SAN BERNARDINO

20 | *Defendant.*

Case No. 5:16-CV-00355-VAP (DTBx)

**ORDER GRANTING DEFENDANT
COUNTY OF SAN BERNARDINO'S
UNOPPOSED APPLICATION FOR
LEAVE TO FILE DOCUMENTS
UNDER SEAL**

**District Court Judge Virginia A. Phillips
Magistrate Judge David T. Bristow**

21 Defendant County of San Bernardino (“County”) has brought an unopposed
22 Application for Leave to File Documents Under Seal. Specifically, the County has
23 requested that the complete, unredacted versions of certain confidential expert
24 reports, prepared for the parties jointly in aid of their settlement negotiations, be
filed under seal. The expert reports at issue are those prepared by (1) Dr. Todd

1 Wilcox, M.D., regarding the County Jail's medical program (Bates Nos.
 2 SBC000001-SBC000025), (2) Dr. Roberta Stellman, M.D., regarding the County
 3 Jail's mental health program (Bates Nos. SBC000026-SBC000065), and (3) Dr.
 4 Jeffrey A. Schwartz, Ph.D. and Gary Raney, regarding use of force in the County
 5 jail facilities (Bates Nos. SBC000066-SBC000123) and which were submitted as
 6 Attachments 1, 2 and 3 respectively to the Declaration of Martin H. Dodd.
 7

8 The Ninth Circuit has comprehensively examined the common law right of
 9 public access to judicial files and records. *See Kamakana v. City and County of*
 10 *Honolulu*, 447 F.3d 1172 (9th Cir. 2006). In *Kamakana*, the court recognized that
 11 different interests are at stake in preserving the secrecy of materials produced
 12 during discovery, and materials produced or presented in relation to dispositive
 13 motions. *Id.* at 1180–81. According to the court, two standards apply to account for
 14 these interests when evaluating requests to seal such materials. A party seeking to
 15 seal “private materials unearthed during discovery,” or to maintain the sealing of
 16 such materials when attached to non-dispositive motions, need only demonstrate
 17 “good cause” to justify sealing. *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678
 18 (9th Cir. 2010).

19 A party must demonstrate “compelling reasons” to seal judicial records
 20 attached to a dispositive motion. *Kamakana*, 447 F.3d at 1179. Here, the expert
 21 reports are submitted as part of the Court's approval of the class settlement. The
 22 Court finds that approval of the parties' settlement agreement is a dispositive
 23 motion and there must be a “compelling reason” to keep the materials under seal.
 24 *See Kamakana*, 447 F.3d at 1178–1180; *M.P. ex rel. Provins v. Lowe's Companies*,
 25 Inc., 2012 WL 1574801, at *1 (E.D. Cal. May 3, 2012) (applying “compelling
 26 reasons” standard related to a minor's settlement because an order approving
 settlement is dispositive). *Select Portfolio Servicing v. Valentino*, No. 12-cv-0334
 SI, 2013 WL 1800039, at *2–3 (N.D. Cal. Apr. 29, 2013) (observing that district

1 courts in this circuit differ on whether a motion to approve a settlement agreement
 2 that releases parties from a case is dispositive or non-dispositive for sealing
 3 purposes). Those compelling reasons must outweigh the competing interests of the
 4 public in having access to the judicial records and understanding the judicial
 5 process. *Kamakana*, 447 F.3d at 1178–79; *see also Pintos*, 605 F.3d at 679 & n. 6
 6 (court must weigh “relevant factors,” including the public’s interest in
 7 understanding the judicial process). The Ninth Circuit has indicated that
 8 “compelling reasons’ sufficient to outweigh the public’s interest in disclosure and
 9 justify sealing court records exist when such ‘court files might have become a
 10 vehicle for improper purposes,’ such as the use of records to gratify private spite,
 11 promote public scandal. . .” *Kamakana*, 447 F.3d at 1179.

12 After reviewing the documents in question, and in light of the entirety of
 13 proceedings in this case, the Court finds compelling reason to file the expert
 14 reports under seal. The Court has considered the reasons for disclosing the
 15 requested sealed records and the need for public access to judicial records. The
 16 Court is cognizant that this case involves a public entity’s management of its jail
 17 facilities, and in a normal case, such information should be public information on
 18 the Court’s docket, if filed with a dispositive motion.

19 In this situation, however, the interest in fostering settlement of such a
 20 complex case necessitates sealing the documents and outweighs the public policy
 21 of disclosure. From the beginning of the case, the parties, rather than take the
 22 typical litigation adversarial posture, elected to work cooperatively together to
 23 achieve the best results for the jail population in light of the claims alleged, and to
 24 keep costs and expenses down while doing so. Rather than use the adversarial
 25 system, which permits each side to select its own expert witnesses, the parties
 26 elected to work together. The parties jointly selected experts for a thorough
 27 evaluation of jail conditions, resulting in the free-flow of information, with an eye

1 towards correction of identified issues. The parties worked in a non-adversarial
 2 manner, with the agreement and expectation that preliminary findings would be
 3 subject to confidentiality. Each of the expert reports contains information about
 4 internal, confidential or security processes. The reports were prepared as part of the
 5 extended settlement negotiations. The Court has been apprised of the status of
 6 those negotiations as they proceeded. The parties jointly selected the experts to
 7 provide confidential information to candidly assess deficiencies in the jail system
 8 that may have existed for the purpose of negotiating the settlement, inform the
 9 Court of any such deficiencies and methods of correction, and to provide a factual
 10 framework for the development of the settlement agreement. The Court finds that
 11 this type of settlement-driven, cooperative conduct, which ultimately inured to the
 12 public benefit, should be encouraged.

13 At issue in deciding whether to seal the expert reports are the competing
 14 public policy interests: the interest in fostering efficient and effective settlement
 15 and resolution of complex litigation versus the interest in public disclosure of
 16 judicial documents. Public disclosure would undermine the confidential nature of
 17 the settlement discussions which led to the ultimate settlement and jeopardized the
 18 unique, non-adversarial method counsel and the parties undertook to reach
 19 settlement.

20 Further, the Court finds that any harm from sealing the expert reports is
 21 mitigated in this case. The final settlement, embodied in the terms of the proposed
 22 Consent Decree and accompanying detailed remedial plan, will be filed in the public
 23 docket and the public will be informed of the monetary and non-monetary
 24 resolution of this case. The balance of interest tips in favor of sealing, and the
 25 Court finds compelling reason to file the documents under seal.

26 CONCLUSION

27 The motion to seal is GRANTED as a compelling reason has been found to

1 preserve the confidentiality of the expert reports of:

2 1. Dr. Todd Wilcox, M.D., regarding the County Jail's medical program
3 (Bates Nos. SBC000001-SBC000025);
4 2. Dr. Roberta Stellman, M.D., regarding the County Jail's mental health
5 program (Bates Nos. SBC000026-SBC000065); and,
6 3. Dr. Jeffrey A. Schwartz, Ph.D. and Gary Raney, regarding use of
7 force in the County jail facilities (Bates Nos. SBC000066-
SBC000123).

8 The Clerk is directed to file under seal each such report under seal.

9 IT IS SO ORDERED.

10
11 Dated: March 27, 2018

Virginia A. Phillips
12 Honorable Virginia A. Phillips
United States District Judge

13
14
15
16
17
18
19
20
21
22
23
24